

ESPA Mitigation and Administrative Framework – The Basics
Submitted to the ESPA Working Group by the
Thousand Springs Water Users Assoc., 24 June 2004

The Thousand Springs Water Users Association was created, in part, to represent and protect the water rights that our family members established so many years ago. It was also formed to obtain and distribute mitigation funds and other forms of relief intended to offset losses resulting from declining spring water supplies.

To that extent, the Association hired Judge Daniel Hurlbutt to help develop standards and procedures for administering the mitigation funds the Association will receive in July. With his assistance, notices were sent to more than 550 spring water users in the Thousand Springs Reach, giving them the opportunity to become members in the Association, and to apply for funds. We are currently in the process of receiving those responses.

The individuals and entities that received those letters hold ^{over 650} spring water rights between Bliss and Twin Falls. These rights date from 1878 to the present, and vary in quantity from 0.02 cfs to 900 cfs. 42% of those spring rights have priority dates between 1878 and 1905; 61% between 1878 and 1950. Understand also that a single water right may serve many users. For example, the spring source for the Hagerman Water Users Assoc. serves 60 households, Big Springs serves over 50 households, Banbury at least 20, and so on. The domestic supplies for the cities of Hagerman and Twin Falls are from springs.

Our members depend on the Thousand Springs to support our families, our businesses and employees, and our communities. Our water rights and our spring flows are the foundation of our lives. The chronic declines in spring flows threaten our livelihoods. Declines are so acute that some springs no longer flow, while others are down 15, 30, 50, and as much as 85% from decreed rights. We've heard complaints from those who have lost their drinking water sources, and concerns from a family whose water source has dropped so low that they were forced to install filters to remove the debris coming through their tap. We know of a family who has to choose between turning on the air conditioner, sprinkling the lawn, using the washing machine, or flushing the toilet – they can't do more than one at a time because the sole spring is so low. We've received questions from business owners wondering whether the tourism industry built around the wildlife, recreation, and scenic springs will continue to sustain their businesses. Flows through the wildlife management area have dropped enough to cause ponds to freeze, so that waterfowl fly over Hagerman instead of landing. This directly affects public and private hunting operations. And then there's the retiree who no longer believes that he'll be able to supplement his disabled veteran's pension with his small farm income.

While spring rights for fish propagation have been highly criticized, the greatest beneficial use is by far irrigation. Less than 25% of the spring rights in the Thousand Spring Reach are for fish. Other beneficial uses include stockwater, domestic and commercial use, minimum instream flow, recreation, aesthetics, wildlife, fire protection, and power generation.

There's been grumbling that we can solve this water crisis by simply buying out the fish hatcheries. Buying out a non-consumptive user will not solve the problem. Take Billingsley Creek, for example. Water is supplied to four hatcheries plus a state-operated research facility, a state-owned park, a federal wildlife management area, a private hunt club, several irrigators; it provides minimum flow to for resident fish for fly-fishing, and it provides eye appeal to tourists staying at a local lodge, all before entering the Snake River. Then it's available for instream flow, endangered species habitat, wildlife, recreation, irrigation, hydropower, and aesthetics. No, buying out a non-consumptive user will not solve the problem. And in this particular case, it may exasperate the situation if those remaining users are without water, as some of the most senior water rights in the Thousand Springs Reach, dating between 1880 and 1884, are located along Billingsley creek.

So how do we begin to approach this problem? First and foremost to lay the foundation to protect our water supplies and our livelihoods, water rights across the ESPA must be respected and enforced as valuable property rights. This basic need has been the foundation of Idaho's constitution and water laws, its economy, and its culture since the earliest days of statehood. Water rights must be administered as decreed or licensed. There can be no administrative or legislative alteration of the prior appropriation doctrine.

Restoration of the Thousand Springs requires recovery of the Eastern Snake Plain Aquifer from the effects of both ground water withdrawals and drought. We recognize that ESPA recovery, through management of ground water rights and recharge, is a long-term goal that will require significant, ongoing commitment of time and resources from the State of Idaho, the federal government and various water users. We understand that private and public institutional barriers must be overcome to achieve long-term aquifer stabilization and recharge. Thus, we support the concept of a central entity to monitor and administer recharge efforts, and need the flexibility to recharge outside the normal irrigation season. Key to this will be acquiring consistent water supplies. Like groundwater users, spring users are asking for assurances to make business plans from year to year.

In order to protect our livelihoods and our water rights until this long-term goal is met, and avoid widespread curtailment of junior ground water rights, our members require action and relief to mitigate for the effects of ground water withdrawals and the effects of drought. To continue diverting water, junior water right holders must be required to mitigate for the depletionary effects of their withdrawals on senior water right

holders, just as new appropriations are required to provide mitigation for their new water rights. Adequate mitigation and relief is an acceptable, interim alternative to mandatory curtailment.

Obviously, we would prefer mitigation that provides usable water directly to the springs and our diversions. To this end, both private and government-funded projects to increase spring water supplies and improve efficiencies should be continued and expanded.

To the extent that water cannot be provided, in order to forgo the priorities of our rights, our members must receive compensation for the depletionary effects of junior groundwater withdrawals. Financial compensation should be at a recognized rate for water, such as that provided in the recent settlement of the Nez Perce Tribe's Snake River Basin Adjudication instream flow claims. To mitigate for the effects of drought, the Association is pursuing various avenues through standard State and Federal assistance programs. We recognize that financial mitigation and drought relief may not be adequate substitutes for water for specific spring users, such as cities.

As recognized in the one-year Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement, curing the water crisis in an way that respects and enforces water rights as valuable property requires a multi-faceted effort to provide interim mitigation and relief while the parties develop and implement a credible, long-term plan for aquifer recovery and spring restoration. Our members are committed to working with the ground water users, the canal companies, cities, the State of Idaho, and the Idaho congressional delegation to find acceptable solutions.